



AN ACT REQUIRING THAT A DISCHARGE PERMIT MUST BE OBTAINED, IF NECESSARY, FOR AN AQUIFER RECHARGE PLAN OR A MITIGATION PLAN IN A CLOSED BASIN; AMENDING SECTIONS 75-5-410, 85-2-362, AND 85-2-364, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-5-410, MCA, is amended to read:

**"75-5-410. Water quality ~~of return flows and discharges associated with~~ requirements -- aquifer recharge plan ~~or certain mitigation plans~~ -- minimum requirements.** (1) (a) Except as provided in subsection (1)(b), a ~~A person who proposes to use sewage from a system requiring a water quality permit for the purposes of aquifer recharge pursuant to 85-2-362 or plans to use sewage from a system requiring a water quality permit as a return flow to minimize the amount of water necessary to offset adverse effects resulting from net depletion of surface water through an aquifer recharge or mitigation plan pursuant to 85-2-362 shall obtain~~ apply for, if necessary, a current permit pursuant to this chapter.

(b) The requirements of this section do not apply to the portion of a mitigation plan that consists of a change in appropriation rights for instream flow filed pursuant to 85-2-402.

(2) The minimum treatment requirements for sewage systems subject to this section are the federal requirements provided for in 40 CFR 133, and the system must meet, at a minimum, the requirements of level two treatment for the removal of nitrogen in the effluent.

(3) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer injection must meet the more stringent of either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

(4) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer recharge must meet either primary drinking water standards pursuant to Title

75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

~~(4) The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation.~~

(5) For the purposes of this section, "aquifer injection" means the use of a well to inject water directly into an aquifer system without filtration through the geologic materials overlying the aquifer system for the purpose of aquifer recharge or for an aquifer storage and recovery project and "aquifer recharge" and "mitigation" have the meanings provided in 85-2-102."

**Section 2.** Section 85-2-362, MCA, is amended to read:

**"85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements.** (1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.

(2) A mitigation plan must include:

- (a) where and how the water in the plan will be put to beneficial use;
- (b) when and where, generally, water reallocated through exchange or substitution will be required;
- (c) the amount of water reallocated through exchange or substitution that is required;
- (d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;
- (e) evidence that an application for a change in appropriation right, if necessary, has been submitted;
- (f) evidence of water availability; ~~and~~
- (g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator; and

(h) evidence that the appropriate water quality permits have been granted pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364.

(3) An aquifer recharge plan must include:

- (a) evidence that the appropriate water quality ~~related~~ permits have been granted pursuant to Title 75, chapter 5, ~~and pursuant to~~ as required by 75-5-410 and 85-2-364;
- (b) where and how the water in the plan will be put to beneficial use;

- (c) when and where, generally, water reallocated through exchange or substitution will be required;
  - (d) the amount of water reallocated through exchange or substitution that is required;
  - (e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;
  - (f) evidence that an application for a change in appropriation right, if necessary, has been submitted;
  - (g) a description of the process by which water will be reintroduced to the aquifer;
  - (h) evidence of water availability; and
  - (i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.
- (4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.
- (5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."

**Section 3.** Section 85-2-364, MCA, is amended to read:

**"85-2-364. Department permit coordination -- requirements for aquifer recharge or mitigation plans.** To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

- (1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation shall provide the department with a copy of a relevant discharge permit if necessary; and
- (2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation until the discharge permit, if necessary, has been obtained and presented to the department."

**Section 4. Coordination instruction.** If both Senate Bill No. 94 and [this act] are passed and approved, then the amendments to 85-2-362 in both Senate Bill No. 94 and [this act] are void and 85-2-362 must read as

follows:

**"85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements.** (1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan. A mitigation plan or an aquifer recharge plan, or both, must provide evidence of how the plan will offset the net depletion of surface water from an appropriation of water that results in an adverse effect, including, at a minimum, evidence:

~~(2) A mitigation plan must include:~~

- ~~—— (a) where and how the water in the plan will be put to beneficial use;~~
- ~~—— (b) when and where, generally, water reallocated through exchange or substitution will be required;~~
- ~~—— (c) the amount of water reallocated through exchange or substitution that is required;~~
- ~~—— (d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;~~
- ~~—— (e) evidence~~

(a) of the amount of water reallocated through exchange or substitution;

(b) of the general timing and location of the water reallocated through exchange or substitution;

(c) that the mitigation water will be available;

(d) of how the mitigation water in the plan will be protected and how it will be measured or accounted

for;

(e) that the appropriate water quality permits have been applied for pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364; and

(f) that an application for a change in appropriation right, if necessary, has been submitted;

~~(f) evidence of water availability; and~~

~~—— (g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.~~

~~—— (3) An aquifer recharge plan must include:~~

~~—— (a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;~~

~~—— (b) where and how the water in the plan will be put to beneficial use;~~

~~—— (c) when and where, generally, water reallocated through exchange or substitution will be required;~~

- ~~\_\_\_\_\_ (d) the amount of water reallocated through exchange or substitution that is required;~~
- ~~\_\_\_\_\_ (e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;~~
- ~~\_\_\_\_\_ (f) evidence that an application for a change in appropriation right, if necessary, has been submitted;~~
- ~~(g)(2) In addition to the requirements in subsection (1), an aquifer recharge plan must also include a~~  
description of the process by which water will be reintroduced to the aquifer;\_
- ~~(h) evidence of water availability; and~~
- ~~\_\_\_\_\_ (i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.~~

(3) A mitigation plan or aquifer recharge plan may not include the proposed elimination of vegetation for which there is not an associated water right.

(4) A mitigation plan or aquifer recharge plan may not include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water. This subsection does not apply to actions that increase the efficiency of existing conveyance structures.

~~(4)(5)~~ The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

~~(5)(6)~~ An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."

**Section 5. Coordination instruction.** If both Senate Bill No. 94 and [this act] are passed and approved, then the amendments to 85-2-364 in both Senate Bill No. 94 and [this act] are void and 85-2-364 must read as follows:

**"85-2-364. Department permit coordination -- requirements for aquifer recharge plans.** To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation and requires a discharge permit pursuant to Title 75, chapter 5, shall provide to the department with a copy of a relevant discharge permit if necessary evidence that an application for the discharge permit has been submitted to the department of environmental quality; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation until the discharge permit, if necessary, has been obtained and presented to the department."

**Section 6. Effective date.** [This act] is effective on passage and approval.

**Section 7. Applicability.** [This act] applies to applications received by the department of natural resources and conservation on or after [the effective date of this act].

- END -

I hereby certify that the within bill,  
HB 0041, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

HOUSE BILL NO. 41  
INTRODUCED BY J. COHENOUR  
BY REQUEST OF THE WATER POLICY COMMITTEE

AN ACT REQUIRING THAT A DISCHARGE PERMIT MUST BE OBTAINED, IF NECESSARY, FOR AN AQUIFER RECHARGE PLAN OR A MITIGATION PLAN IN A CLOSED BASIN; AMENDING SECTIONS 75-5-410, 85-2-362, AND 85-2-364, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.